REMARKS

Specification

The embedded hyperlinks have been deleted from the specification.

Rejection under 35 U.S.C. §112, second paragraph

The claims have been amended by deleting the phrase "selected from one of the groups consisting of." This amendment does not change the claim scope, but merely uses alternative wording to clarify that the polypeptides or polynucleotides can be selected from the recited list.

Rejection under 35 §112, first paragraph

The claims are fully in conformance with §112, first paragraph. For example, the specification describes the activity of the claimed polypeptides on Page 3, line 17-Page 4, line 23. This activity can be tested for in accordance with any of the methods described in the references cited on Pages 3-4, or as described in Example 4 on Page 31 of the specification. Therefore, it would be routine to determine which polypeptide possess a biological activity.

In addition, the claims have been amended to recite hybridization aspects. The Patent Office in its *Written Description Guidelines* has indicated that this type of claim format is an acceptable way of claiming subject matter. See, e.g., *Synopsis of Application of Written Description Guidelines*, Example 9.

The presence of inoperative embodiments within the scope of a claim does not, by itself, render a claim non-enabled. The standard is whether a skilled person could determine which embodiments that were conceived, but not yet made, would be inoperative or operative with expenditure of no more effort than is normally required in the art. Atlas Powder Co. v. E.I. du Pont de Nemours & Co., 750 F.2d 1569, 1577, 224 USPQ 409, 414 (Fed. Cir. 1984); MPEP 2164.08(b). The information provided in the specification (e.g., activity assays) is more than

adequate to meet this criterion without undue experimentation.

Relevant case law (e.g., described in M.P.E.P. 2164.08) where enablement was found deficient was where actual failures within the scope of the claim were identified, and applicant was claiming entire huge eclectic classes (e.g., In Wright: "any and all live, non-pathogenic vaccines, and processes for making such vaccines, which elicit immunoprotective activity in any animal toward any RNA virus." (Original emphasis); In Goodman: "The specification did not enable the broad scope of the claims for producing mammalian peptides in plant cells because the specification contained only an example of producing gamma-interferon in a dicot species, and there was evidence that extensive experimentation would have been required for encoding mammalian peptide into a monocot plant at the time of filing"). These defects have not been identified here.

Rejection under 35 U.S.C. §102

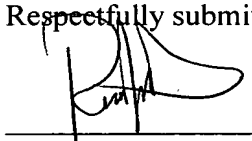
U.S. Pat. Nos. 5,968,822 (Pecker et al) and 6,461,848 (Nakajima et al.) do not disclose an isolated polypeptide comprising the polypeptide sequence of SEQ ID NO: 2, or peptides having at least 95% identity to it. Therefore, these references do not anticipate the claims. (U.S. Pat. No. 6,461,848 is apparently not prior art since its §102(e) date is August 7, 2000 – after the priority dates of the present application.)

WO 200100643 is not prior art. Its publication date is January 4, 2001 which is after the September 23, 1999 and July 7, 2000 priority dates of the present application. The WO is also not available under 35 U.S.C. §102(e) because its international filing date is prior to November 29, 2000 and thus pre-AIPA §102(e) applies. See, M.P.E.P. 706.02(f)(1).

In view of the above remarks, favorable reconsideration is courteously requested. If there are any remaining issues which could be expedited by a telephone conference, the Examiner is courteously invited to telephone counsel at the number indicated below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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